

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 528 OF 1987

with

CIVIL APPLICATION NO.11654 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

DR.MUKUNDRAI VENISHANKAR TRIVEDI
VERSUS
STATE OF GUJARAT & ORS.

Appearance:

MR NR SHAHNI for petitioner - applicant
MR MUKESH PATEL for Respondent No.1
None present for Respondent No.2
MR HS MUNSHAW for Respondent No.3

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:30/12/1999

C.A.V. JUDGMENT

#. The original petitioner, Dr.Mukundrai Venishankar Trivedi has expired on 28th March 1991. His heirs, the widow and two daughters filed Civil Application No.1821 of 1992 in this case and prayed therein for bringing them on the record of this special civil application as petitioners No.1/A, 1/B and 1/C. This Civil Application came to be allowed by this Court on 17th September, 1992 and the heirs and legal representatives were ordered to be brought on record of this special civil application. However, necessary correction has not been made in the cause title of the special civil application. When the matter was heard and order was kept reserve, during the course of dictation of judgment this court has noticed that not only the original petitioner has expired but one of his legal heirs, the widow has also expired, but no steps have been taken by petitioner to bring the heirs and legal representatives on record. It is also noticed that necessary correction has not been made in the cause title of the special civil application. The matter was again posted for hearing. The other legal heirs have filed Civil Application No.11654 of 1999 wherein it is disclosed that widow has expired on 20th September 1994. Prayer has been made that other heirs, namely two daughters may be permitted to continue these proceedings. Prayer has also been made for making necessary amendment in the cause title.

#. The widow is survived by two daughters. Right to sue after her death survives to her two daughters who are already on record of this special civil application as heirs and legal representatives of their deceased father. It is a different matter that necessary correction in the cause title has not been made but substitution of heirs and legal representatives of these petitioners has been granted by this Court. The widow has expired during this period. Her two legal representatives are already on record of this special civil application and the prayer made in the civil application deserves to be granted. In the result, civil application No.11654 of 1999 stands disposed of in the terms that the two daughters, namely Kumari Dharmishtha M. Trivedi and Kumari Jaimini M. Trivedi are permitted to continue this writ petition as petitioners. The office is directed to make necessary correction in the cause title of this special civil application by showing their names as petitioners No.1 and 2 respectively therein. The civil application stands disposed of accordingly.

#. In the writ petition, the original petitioner, since deceased, hereinafter referred to as petitioner, prayed for declaration that respondent No.2 is required to pay the wages to the petitioners in the pay scale of Rs.425-850 from 8.9.1969 to 31.12.1972 and thereafter from 1.1.1973 in the pay scale of Rs.700-1300 and further directing the respondents to pay all the arrears of wages, allowances and benefits admissible to similarly placed doctors with 15% interest per annum. Second prayer has been made for declaration that the petitioner is entitled to usual benefits like earned and other leaves and directing the respondent No.2 to pay the cash equivalent of these leaves from the date of joining of the original petitioner with 15% interest per annum and further declaring that the petitioner is entitled to be paid due salary in the grade of Rs.700-1300 and other allowances as recommended by Desai Pay Commission in future. Third prayer has been made for granting such other and further orders as circumstances of the case may require.

#. This writ petition was admitted by this Court on 20.2.1987. However, prayer made for interim relief was not granted. The petitioner prayed for interim relief in terms that the respondent No.2 may be restrained from refusing to permit the petitioner to rejoin his duties and further restraining them from terminating his services. Second interim relief prayed is for directing the respondent No.2 to pay the salary and allowances to the petitioner as payable to other employees of the State in the pay scale of Rs.700-1300 with prospective effect.

#. This writ petition is contested by respondents No.2 and 3. Both have filed detailed reply to the same which are on record of this special civil application.

#. The facts of the case, as per the averments made in the special civil application, are that the original petitioner, since deceased, was a registered medical practitioner. He joined the services of respondent No.2-Panchayat on 8.9.69. This petitioner was having experience of about seven years prior to joining the G.Panchayat. He worked on the post of medical officer and was entrusted with independent charge of the dispensary of the Panchayat. The services of the petitioner were absolutely blotless. He had earned appreciation of the residents of the village and other nearby villagers. There was absolutely no question of any adverse remarks or punishment being awarded to the petitioner. The petitioner admitted that once he

resigned from services which, as per his case, happened during 1980, but was prevailed by respondent No.2 to withdraw his resignation. It is the case of petitioner that he was though serving as a medical officer, he has been paid consolidated salary, much less than what it is payable to a class-IV employee. The details of consolidated salary which has been paid to the petitioner from time to time have been given in para-8 of the special civil application. The petitioner is claiming himself to be a class-II medical officer and the pay scale which has been prescribed for this category of officers under different pay scale rules is being claimed by petitioner in this special civil application. The petitioner submitted that he filed a detailed representation to respondent No.2 dated 29.4.86, annexure-B, in which he prayed for giving him regular pay scale of doctor. This claim has been made or as it appears from the representation itself, on the principle of 'equal pay for equal work'. This has been replied by respondent No.2 vide its letter dated 23rd May 1986. The petitioner applied for three months' leave vide application dated 30th June 1986 as he had to undergo treatment for his eye. He proceeded on leave from 15th July 1986 for three months. After completion of his leave, when he went for joining his duties, he was not allowed to join duties. He submitted a formal application along with the certificate of private doctor for his treatment vide letter dated 18.10.86. He sent another letter to the respondents to take him back on duty. However, the respondent No.2 insisted for certificate of civil surgeon which also the petitioner produced ultimately but to his utter surprise, he was not allowed to join duties. The respondent No.2, under its letter dated 12.11.86, insisted from the petitioner for evidence of age of the petitioner and said that in case no such certificate is produced, his services are to be terminated. The petitioner sent a letter through the advocate dated 31.12.86. Hence this special civil application before this Court.

#. During the course of arguments, the learned counsel for the petitioner admits that the services of the petitioner were brought to an end by respondent No.2 and he is not questioning this action of respondents. He is confining this writ petition for claim of increased pay from the date of appointment to the date of termination of services of the original petitioner as per the pay scales which have been prescribed for this post from time to time. He further claimed for giving him pension and other retirementary benefits as it may be taken to be a case of retirement of the petitioner.

#. The respondent No.3, in reply to the special civil application, has come up with the case that the petitioner is not an employee of the State Government or District Panchayat. It has further been stated that the District Panchayat has not appointed the petitioner and there exists no relation of employer and employee in between them. The petitioner has been appointed by Gram Panchayat and without prior approval or sanction from the District Panchayat and even no intimation was sent to the District Panchayat for this appointment. It is the appointment of petitioner by Gram Panchayat for its own dispensary and which was run by its own financial sources and the petitioner has been paid salary accordingly. It is not the liability of respondent No.3 to pay anything to the petitioner towards the salary etc. It has further been stated that the District Panchayat has its sub centre for medical services at village Kathwada under the primary health centre situated at Singharva and the other sub centre of the primary health centre is run, administered and managed by District Panchayat through its own employees and funds as per the State Government scheme. The Gram Panchayat was paying salary to the petitioner from its own funds and there is no liability of respondent No.3 in this case for the petitioner. The respondent No.3 is not necessary or proper party to this special civil application. Further fact has been disclosed that the petitioner resigned from the services and then again he was taken back in service.

#. The respondent No.2, in the reply to the special civil application, has come up with the case that the dispensary which the Gram Panchayat was running has been closed under the Resolution dated 29th December 1986. Not only that the dispensary has been closed but the petitioner has also been relieved as a medical officer. It is stated that the respondent - Gram Panchayat since last 22 years was running the said dispensary. When this dispensary was started, there was no medical facility for villagers of the village or nearby villages. However, at present, there is primary health centre and maternity home run by Ahmedabad District Panchayat in the area of Panchayat. In addition to this, there are six other private dispensaries in Kathwada village. The respondent No.2 has then given out the details of losses which it incurred for running of the dispensary. It has been given out that there was income of Rs.2110/= and expenses of Rs.13393.50 in the year 1983-84. In the year 1984-85, the income of the dispensary was of Rs.2075/= and the expenditure was Rs.14857=42. In the year 1985-86, the income of this dispensary was Rs.1994/= and the

expenditure was Rs.16442=80. As the Gram Panchayat was incurring heavy losses by running of the said dispensary, it had decided ultimately to close the same and dispense with the services of the petitioner. It is stated that under the Gujarat Panchayats Act, there is no obligation for the Gram Panchayat to run the dispensary. Due to these heavy losses suffered by Gram Panchayat and continuing of this dispensary, other developmental work of the Panchayat could not be carried out. It was not possible for the Gram Panchayat to increase the taxes for running the hospital. The Local Fund Auditor for the accounting year 1985-86 has made a note in paragraph-12 of his audit report that the Panchayat should reconsider the fact of running dispensary. So ultimately all the members of the Kathwada Gram Panchayat unanimously resolved to close the said dispensary and relieve the petitioner as medical officer. The resolution of the Gram Panchayat is on the record of this special civil application. The Sarpanch, Kathwada Gram Panchayat, by the notice dated 27.2.87, informed the petitioner about the resolution of the Panchayat of closing the dispensary and relieved him from the services. The services of the petitioner were brought to an end after giving notice. It is the duty of the District Panchayat to run primary health centres and other dispensaries in the District. The Gram Panchayat has made a categorical statement in the reply that it does not get any financial aid or grant from the District Panchayat or the State Government to run the dispensary. The respondent-Gram Panchayat further stated that it was running the dispensary from its own funds for the last 29 years.

##. The petitioner has not filed rejoinder to the reply filed by any of the respondents. So the facts stated in the reply by respondents No.2 and 3 are taken to be uncontroverted.

##. The learned counsel for the petitioner contended that the petitioner, who was serving as a medical officer of the Gram Panchayat, has to be taken as a civil servant and as a result thereof, he is entitled for pension and other retirementary benefits after retirement and for services he rendered in the pay scale of medical officer, Class-II from the date of appointment. It has next been contended that the petitioner has served the Gram Panchayat's dispensary for a considerable long period and the Gram Panchayat has made his exploitation by giving him meagre amount towards salary which was in fact even less than what it was paid to a class-IV employee. The petitioner served the Gram Panchayat and the Gram Panchayat on its side is under a legal obligation to pay

to the petitioner, the pay in the regular pay scale prescribed for medical officer, Class-II. It has next been contended that the Gram Panchayat runs its dispensary by keeping a doctor which has to be taken to be a case of deemed sanctioning of dispensary and the post by the State Government and even if the State Government was not providing any finance to this dispensary, the petitioner is entitled for the pay scale on the post of medical officer, class-II as well as all the retirementary benefits on the basis of the same. In support of his contention, the learned counsel for the petitioner relied on two decisions of this Court in the case of Mankuvarba Manaharsinh Vaghela v. Tharad Nagar Panchayat & Anr., reported in 1992(1) GLR 375 and in the case of Modi Ramsingbhai Madhavbhai v. Bhabhar Nagar Panchayat & Anr., reported in 1992(2) GLR 1140.

##. Mr. Mukesh Patel, learned counsel for respondent No.1 with all vehemence at his command contended that the petitioner cannot be taken to be a Government servant for any purpose whatsoever. It is not the case where the State Government has given any directions to the Gram Panchayat to run dispensary. It has not provided any finance nor it has sanctioned any post of medical officer and as a result thereof, the respondent No.1 cannot have any liability towards the pay or revised pay or pension or other retirementary benefits of the petitioners. It is next contended that this dispensary has been run by the Gram Panchayat from its own funds and the petitioner's services also cannot be taken to be pensionable services. Lastly, it is contended that the post of medical officer, Grade-II is a post which is within the purview of Gujarat Service Commissioner. It is a case where the petitioner has been appointed without selection by respondent-Gram Panchayat and the expenses of dispensary were borne by the Gram Panchayat from its own funds. It is not a case where the petitioner can enforce any of his claim against the State Government.

##. Nobody is present on behalf of respondent No.2.

##. On perusing the special civil application and the reply filed by respondents No.2 and 3 and having heard the learned counsel for the parties, I am satisfied that this writ petition is wholly misconceived and the reliefs as prayed for by petitioner in this special civil application cannot be granted.

15. The petitioner has not produced on the record of this special civil application any order of the creation of the post of Medical Officer in the Gram Panchayat

concerned. He has further failed to produce on the record of this special civil application any order of starting of the dispensary at the village by the Gram Panchayat. Not only this, on the record of this special civil application, I do not find any material to show and establish that the running of the dispensary as well as the working of the petitioner as Medical Officer therein in the village of the Gram Panchayat concerned, the same has been sanctioned, approved or confirmed by the District Panchayat or from the State of Gujarat. From the facts of this case, it reveals that this dispensary appears to have been started by the Gram Panchayat from its own contingency fund to provide medical facilities to the villagers. Looking to the consolidated salary which has been given to the petitioner, it is a case where he voluntarily served the cause of the villagers without there being any consideration for services or the pay scale and other service benefits. This is fortified from the fact also that the petitioner has not raised any demand till he filed his first representation on 24-4-1986 demanding thereby the pay scale of the post of Medical Officer, Gr. II. The post of Medical Officer, Gr. II is a post which is within the purview of Gujarat Public Service Commission. I have my own reservation whether such highest post could have been created or sanctioned by the Gram Panchayat. Otherwise also, from the facts of this case, it remains no more in doubt that it was only a cause to serve the people, the Gram Panchayat started this dispensary and the petitioner voluntarily offered his services on nominal amount. It appears to be only a honorarium. Be that as it may. The petitioner at no point of time has raised all these voice, demands and claims. When he reached the age of superannuation or would have become incapable of discharging these duties would have thought of to file such a representation. The petitioner in the year 1975 resigned from the services on which fact there is no dispute. This resignation has been submitted by the petitioner on 1-7-1975. Then again though the material is not produced on the record by the petitioner, he would have offered his services and he was taken back in the dispensary. Once he has resigned from the services what he called it to be on 17-1975, I fail to see how far it is justified by the petitioner to claim the benefit of services from the year 1969 till the date of resignation of his services. The petitioner has not produced on the record of this special civil application any material to show that he was taken back in the services with continuity of services or with an understanding or with the condition that he will get the pay scale and all other service benefits.

16. For grant of pay scale to the employees of the Gram Panchayat, two things are very essential i.e. the sanction of the post with prior approval of the State Government and prescription of qualifications for appointment on the post with mode of recruitment. The petitioner in this special civil application in fact is claiming that he may be treated to be a civil servant and as a result thereof be given all the benefit of the pay scale which has been prescribed for the post of Medical Officer, pension and all other retiral benefits but this claim can not be accepted for the obvious reasons that the post of Medical Officer, Gr. II, was never created by the Gram Panchayat nor such a post has been sanctioned by the State Government for the Gram Panchayat. The Gram Panchayat was not receiving any grant-in-aid for this post or the dispensary. It is Gram Panchayat's own creation and it run this dispensary from its own sources. From the facts of this case, I find that by running of the dispensary, the Gram Panchayat suffered huge losses and the amount which would have been utilised otherwise for other public purposes has been paid for the honorarium of the deceased petitioner. It seems to be a case where the petitioner may be a favourite of some person who was there in the Gram Panchayat, got all these benefits. The petitioner has failed to make out any right to base his claim for pay in the pay scale of the post as well as the benefit of revision of pay scale as made from time to time and pension and other retiral benefits. The services of the petitioner can not be taken to be pensionable. This writ petition is in fact an attempt to get all these benefits when the Gram Panchayat decided to discontinue this dispensary. This dispensary was discontinued because of heavy loss by the Gram Panchayat under its resolution dated 29th December, 1986 and then this writ petition has been filed. This is an attempt made by the petitioner since deceased for the claim which he never expected nor he was given any assurance or any guarantee for the same by the Gram Panchayat.

17. Taking into consideration the totality of the facts of this case and the fact that the now after closing of this dispensary, the petitioner filed this petition coupled with the fact that no such post has been created by the Gram Panchayat nor any such post has been sanctioned by the State Government, District Panchayat nor either the State Government or the District Panchayat provided any financial aid to the Gram Panchayat to run such a dispensary, the claim as made by the petitioner in this special civil application can not be granted and as

a result thereof, no relief whatsoever can be given to the petitioner. The case on which reliance has been placed by the learned counsel for the petitioner are of little help to him in this case. The ratio of the decision is on the basis of the facts of that case. Each case has to be decided on its own facts.

18. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. NO order as to costs.

sunil/zgs